

Cook Composites and Polymers Co. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Petitioner. Case 8-RC-15001

April 20, 1994

ORDER DENYING REVIEW

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions are attached). The request for review is denied as it raises no substantial issues warranting review.¹ The Employer's request to stay the election is also denied.

¹ The only issue raised by the request for review was whether the Regional Director erred in finding that the data entry operators were not plant clericals, and thus need not be included in the petitioned-for production and maintenance unit.

APPENDIX

5. The Employer is engaged in the manufacture of gel coat, a laminating composite used to coat such items as boats, bathtubs, and automobile parts, at its Sandusky, Ohio facility, the only facility involved here. There are approximately 34 employees in the unit found appropriate.

The parties disagree with respect to the voting eligibility of seven individuals. The Employer would include the two production foremen, the quality assurance foreman, the shipping/receiving foreman, and the safety maintenance manager. The Petitioner maintains that these individuals are supervisors within the meaning of Section 2(11) of the Act who should therefore be excluded from the unit. In addition, the Employer takes the position that the two data entry operators are plant clericals who should be included in the unit. The Petitioner, however, asserts that these individuals are office clericals who do not share a community of interest with the other employees in the proposed unit.

The Employer operates a customer service center in Kansas City, its only other facility. It purchased its Sandusky manufacturing facility in January 1993 from a predecessor known as American Colors. There are two primary buildings located at the Sandusky facility. Building 1, as the Employer refers to it, is divided into three subsections known as 1A, 1B, and 1C. Building 1A houses the mechanical room, a storage area, the lunchroom, the shipping and warehouse area, and the quality assurance lab. The production floor is housed in building 1B. Bulk storage for resins and solvents is found in building 1C. Building 2 houses the office, the employee locker rooms, and the maintenance shop. The two buildings are separated by a driveway which measures 14 feet across.

Evidence demonstrates that the Employer's operation is divided into five distinct functions: production, quality assurance, shipping/receiving, manufacturing data entry, and maintenance. Production is performed on a first- and third-shift

schedule with nine production laborers employed on each shift. A production foreman is assigned to each shift and the operation is managed by a production manager who reports to the plant manager and the assistant plant manager. Quality assurance is performed by three color matchers and four quality assurance lab technicians. There is a lab foreman who reports to the quality assurance manager. Shipping/receiving is done by a shipping/receiving foreman and two laborers, one of whom is involved in this function on a half-time basis. There are two manufacturing data operators and they are located in the office area of building 2. Maintenance involves the services of the safety maintenance manager and the maintenance laborer. The production manager is responsible for the shipping/receiving and maintenance functions while the office manager oversees the data entry operators.

The Production Foremen

Each of the Employer's two production shifts includes nine laborers and a production foreman. Joe Hughes is the day-shift foreman and Robin Smith is the foreman at night. The Employer does not presently operate a second shift. Hughes and Smith report to the production manager, John Legaj. Evidence demonstrates that the production foremen work alongside the laborers and spend anywhere from 90-95 percent of their worktime engaged in the same production work. They are trained to perform any of the tasks involved in production and are used utility men whose efforts are directed at clearing up bottlenecks in the process. When they are not engaged in production, the foremen are asked to verify the ingredients put into the products, complete paperwork, and answer questions regarding the batch tickets which govern the manufacturing process.

The record indicates that each shift begins with a short meeting wherein the production foreman distributes the batch tickets to employees. This assignment of work, according to George Kunkle, the Employer's vice president for manufacturing, is routine. Each employee merely receives those batch tickets for the area in which he or she normally works. Kunkle added that the foreman generally works in the area where the most effort will be required. Randy Minor, a laborer on the day shift, testified that he works as a rover and is assigned his daily tasks by Foreman Hughes. Minor, however, did not indicate that Hughes does anything more than instruct him to assist in the area where an extra hand is needed. Kunkle noted that a foreman can direct an employee to another area when extra help is needed there. Minor, the rover, acknowledged that most of his day involves doing what is required by the batch tickets and that he needs very little direction.

Evidence indicates that both Joe Hughes and Robin Smith were production laborers before they became foremen. Foremen are required to serve a 30- to 90-day probationary period. Thereafter, they receive an additional 50 cents per hour. Kunkle testified, without contradiction, that the production foremen receive an hourly wage that is within the same range as that paid to laborers. The foremen and laborers both punch a timeclock, wear the same uniforms, use the same lunchroom, and receive identical benefits.

The record demonstrates that production foremen do not have the authority to hire or fire employees. These tasks are performed by John Legaj, the production manager, in coordination with the plant manager, Scott Bechtel. The foremen

report to Legaj or Bechtel with respect to job performance problems experienced by any of the laborers. There is no evidence, however, that the foremen make recommendations regarding possible discipline.² Rather, testimony establishes that the foremen merely serve a reportorial function in the disciplinary process. Decisions on disciplinary action, according to the record evidence, are made by Legaj and Bechtel.

While production foremen attend daily staff meetings which also include members of higher management, the evidence fails to establish that they engage in any process of setting employer policy. Indeed, the record does not indicate the nature of the business conducted at these meetings. Production foremen also participate in the meetings associated with the employee evaluation process. The record demonstrates that they merely act as silent witnesses at these sessions. Each foreman prepares an evaluation report for the employees on his shift, but there is no evidence that any sort of recommendation is made with regard to wages, promotions, or other personnel actions.

According to laborer Randy Minor, employees who cannot report for a scheduled shift are required to report off by phone to their foreman. Minor added, however, that approval for the absence must be granted by Scott Bechtel. As an example, he noted that Bechtel refused to allow him to take a day missed as a snow day but rather required Minor to charge it as a vacation day or a floating holiday. All vacation or leave requests made in advance, according to Minor, are given to the foreman but acted on by Bechtel. The record further indicates that approval to leave work early on the day shift must be given by the production or plant manager. However, since they are not present on the night shift, Robin Smith is authorized to allow an employee to go home if that person is ill.

Kunkle testified that training is not necessarily the province of the foremen alone. Generally, the more experienced employees train new hires in the operation of the machinery. If a problem arises with a paycheck or timecard, foremen instruct employees to take up the matter with Legaj. With respect to overtime, evidence demonstrates that foremen are directed by the production manager to seek out volunteers. If none come forward, Legaj alone assigns mandatory overtime.

The Petitioner maintains that the foregoing evidence supports a finding that the production foremen are supervisors within the meaning of the Act and should be excluded from the unit. As the party alleging supervisory status, moreover, the burden falls on the Petitioner to prove that these individuals are supervisors. *Northcrest Nursing Home*, 313 NLRB 491, 496 at fn. 26 (1993); *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979). On full consideration of the record evidence, I have concluded, contrary to the Petitioner's assertion, that the production foremen, Hughes and Smith, do not exercise any of the unequivocal indicia of supervisory status defined in Section 2(11) of the Act.

²Greg Gosser, a production laborer, testified that when he was a foreman at the time that American Colors operated the facility, he made certain recommendations regarding discipline. He added that his recommendations were followed only part of the time. The record does not establish that the Employer has continued the same policies or organizational structure as its predecessor. Therefore, Gosser's testimony with respect to the predecessor's practices is not material to this proceeding and I shall not give it any weight.

In its brief, the Petitioner cites a number of factors which it claims establish the supervisory status of the production foremen. It notes that they attend daily staff meetings in which laborers do not participate and that the foremen each have their own desk. The record, however, does not contain evidence that the foremen have made recommendations at the staff meetings that resulted in policies or procedures implemented by the Employer affecting employees' terms or conditions of employment. Attendance at such meetings, in the absence of the exercise of any of the statutory indicia of supervisory authority will not operate to render the participants as supervisors. *Clark Machine Corp.*, 308 NLRB 555, 556 (1992). The record also failed to establish any purpose or significance to the desks assigned to each supervisor and I therefore cannot ascribe supervisory status on the basis of this fact.

Petitioner asserts that foremen participate in the disciplinary process and engage in employee evaluations. The evidence shows nothing more than that the foremen serve a reportorial function. They report incidents to their superiors and act as witnesses at disciplinary and evaluation meetings. The Petitioner, moreover, has failed to demonstrate that the foremen effectively recommend that disciplinary actions be taken or that the Employer order particular rewards or punishments related to performance evaluations. On the contrary, the record establishes that this authority rests with the production manager or the plant manager. The Board has found that factual assessments or opinions expressed concerning the job performance of other employees, with nothing more, do not establish supervisory status. *The Door*, 297 NLRB 601 (1990); *Willis Shaw Frozen Food Express*, 173 NLRB 487 (1968).

According to the Petitioner, its witness, Randy Minor, testified that the production foremen assign work based on their independent judgment. Minor, however, also acknowledged that his work is primarily directed by the content of the batch tickets. The record, furthermore, establishes that the assignment of work by the foremen is repetitive and routine. Kunkle testified, without contradiction, that the foremen merely give the batch tickets to the employees who normally perform the same functions. The laborers' work is thereafter dictated by the instructions on the batch tickets. The evidence demonstrates, moreover, that the laborers are generally self-directed in the additional tasks of performing cleanup or scraping drums. If they are slack in getting to these chores, the foremen merely directs that the work must be done. The record indicates that the foremen are also required to engage in cleanup and scraping drums. Where routine work of a repetitive nature is assigned, the Board has held that this is not indicative of supervisory status. *Highland Telephone Cooperative*, 192 NLRB 1057 (1971); *Commercial Fleet Wash*, 190 NLRB 326 (1971).

In summation, the Petitioner has not carried its burden of demonstrating that the production foremen are statutory supervisors. The record rather establishes that these individuals have the same supervision, benefits, and other terms and conditions of employment as the production laborers. While they have some additional duties, the evidence reflects that they do not exercise independent judgment but merely execute and oversee tasks of a routine and repetitive nature. Furthermore, the fact that they are engaged in the same production work as the laborers for at least 90 percent of their workday

is a strong indicator that the production foremen are merely leadpersons. *Risdon Mfg. Co.*, 195 NLRB 579, 581 (1972).

Based on the foregoing and the record as a whole, I conclude that Production Foremen Joe Hughes and Robin Smith are not supervisors within the meaning of Section 2(11) of the Act and they are therefore eligible to vote in the election directed here.

The Quality Assurance Foreman, Shipping/Receiving Foreman, and Safety Maintenance Manager

The Petitioner maintains that the quality assurance foreman, shipping/receiving foreman, and the safety maintenance manager are supervisors and should be excluded from the bargaining unit. The record evidence with respect to these individuals, however, demonstrates that their status is nearly identical to that of the production foremen. Based on the matters set forth below, I have therefore concluded that these foremen are nonsupervisory leadpersons and should be included in the unit.

The quality assurance foreman is Mark Van Cauwenbergh. He works alongside two other quality assurance employees on the day shift and 90-95 percent of his time is devoted to the same tasks that they perform. There is a single quality assurance employee who works on the third shift without supervision. George Kunkle testified, without contradiction, that the batch testing and batch card filing done by the quality assurance employees is routine and repetitive work. They run the same tests on the retain of every batch that is brought to them. Moreover, there is no need to assign employees to test a particular batch since the retains are dealt with in the order in which they come to the lab.

With respect to employee discipline, vacation requests, evaluations, assignment of overtime, calling off procedures, and attendance at staff meetings, the facts concerning Van Cauwenbergh are identical to those regarding the production foremen. The record demonstrates that supervisory authority on these matters is exercised by Van Cauwenbergh's superior, Bill Bannow, the quality assurance manager. I further note that like the production foremen, the quality assurance foreman punches a timeclock, wears the same uniform as the other employees, and eats in the same lunchroom. Van Cauwenbergh was hired from the outside at an hourly rate 10-15 percent above entry level pay. However, according to Kunkle, his wage rate is not higher than some of the employees who have been employed longer because the Employer bases its pay on longevity rather than on an established wage scale.

The Petitioner does not directly address the issue of Van Cauwenbergh in its brief and the evidence it has offered fails to meet its burden of establishing that he is a statutory supervisor. I find, based on the record evidence, that the quality assurance foreman does not exercise any of the indicia of supervisory status but rather spends the bulk of his time performing the same work as other employees and otherwise executes the duties of a leadperson. I shall therefore include him in the unit.

Jeff Lewis is the foreman in the shipping/receiving department and he is directed by the production manager, John Legaj. Evidence indicates that Lewis works alongside one other shipping/receiving employee, Tony Rodisel, and performs the same tasks except that he is responsible for completing certain paperwork. There is one other employee who

also performs shipping/receiving work on a half-time basis. The employees in this department are responsible for retrieving items from the production area for shipping, consolidating shipments in the warehouse area, generating and completing pick tickets, and entering data in the computer which is used to generate packing slips and bills of lading.

The Petitioner, in arguing that Lewis is a supervisor, relies on the same factors it cited with respect to the production foremen. However, the record demonstrates that Lewis has no more authority than Hughes, Smith, or even Van Cauwenbergh. On the issues of employee discipline, assignment of work, vacation or leave requests, attendance at staff meetings, calling off work and assignment of overtime, the evidence shows that supervisory authority in these matters rests with Legaj and Bechtel. Lewis neither hires nor fires, recommends discipline, nor uses independent judgment in assigning work or overtime. Furthermore, it is unreasonable to conclude that a supervisor is required to oversee the job performance of 1-1/2 other employees.

Evidence rather demonstrates that Lewis punches a timeclock and wears a uniform like other employees. He also uses the same lunchroom. Most significantly, nearly all of his working time is spent performing the same tasks as the other shipping/receiving employees. Accordingly, I conclude that the Petitioner has not met its burden of proving that Lewis is a supervisor and I find that he is a leadperson eligible to vote in the election directed here.

The safety maintenance manager is Richard Carbary and there is only one other employee in the maintenance department. The latter, David Keaton, testified that Carbary spends about 5 hours of each workday performing maintenance tasks. This assessment is not substantially different from that of George Kunkle who estimated that Carbary spends about 70-75 percent of his time in hands-on maintenance work. The remainder of Carbary's time, however, is also maintenance related. He talks to employees in other departments about their maintenance needs, orders replacement parts, works with outside contractors on large maintenance assignments, and consults with the plant manager regarding maintenance problems.

According to Keaton, the work assignments of the maintenance department are drawn up by the plant manager or the assistant plant manager. Keaton noted that the breakdown of who performs the work is decided by the relative job skills of Carbary and himself. Carbary takes the tasks that Keaton does not have the skills to perform. If the task is particularly difficult, Keaton and Carbary work on it together. Jobs that are too forbidding for either of them are submitted for contract by outside maintenance firms. Keaton also noted that Carbary and he are often working in different areas of the plant. He routinely only sees Carbary once a day at about 10 a.m. at which time they review and divide the work list given Carbary by the plant manager.

With respect to such issues as discipline, assignment of work, leave, staff meetings, evaluations, and calling off, the record evidence regarding Carbary is not different than that cited above with reference to the other foremen. Keaton noted that he has been disciplined twice and that both times it was by order of the plant manager, Bechtel. He acknowledged that work assignments come from a list prepared by Bechtel and that he performs the less skilled, more janitorial functions. Keaton testified that leave requests are decided on

by Bechtel and that Carbary does not have the authority to assign mandatory overtime. While Keaton stated that Carbary actively participated in his employee evaluation, he offered no evidence that Carbary made any effective recommendations in this regard. Rather, Keaton admitted that the significant aspects of the evaluation were handled by Bechtel.

Again, the Petitioner has not met its burden of demonstrating that Carbary is a supervisor within the meaning of the Act. Rather the evidence reveals that Carbary spends nearly all his time performing maintenance tasks and interacts with Keaton, the only other maintenance worker, as a leadperson.³ I therefore conclude that Richard Carbary is not a supervisor within the meaning of Section 2(11) of the Act and is eligible to vote in the election.

The Manufacturing Data Entry Operators

The Employer would include the manufacturing data entry operators (the operators), maintaining that they are plant clerical employees who share a community of interest with the other unit employees. For its part, the Petitioner asserts that the operators are office clericals of the type generally excluded from a production and maintenance unit by the Board. Based on the facts set forth below, I conclude that the operators are indeed clerical employees who do not share a community of interests with other unit employees.

As indicated above, the data entry operators are located in the office area of building 2. Thus, they are physically removed from the production process which is conducted in another building. The record also establishes that the operators both work days and are directly supervised by Pat Comley, the Employer's office manager. The Employer makes no assertion that Comley is engaged in the production process.

The essential job duty of the operators is to enter data, mostly from the batch tickets, into the computer system. George Kunkle testified that this task takes up approximately 90 percent of their time. The remaining 10 percent, according to Kunkle, involves traditional secretarial duties such as typing, filing, and answering the telephone.

The Employer claims that the data entry operation is integral to the production process because the batch tickets cannot be closed out and the product shipped until the operators perform their duties. Thus, for example, the operators would be responsible for clearing up any discrepancies that exist between the data on the batch tickets and the plant inventory. The record also indicates that the operators are responsible for generating address labels for shipping, assigning freight carriers, and filing pick tickets, packing slips, and bills of lading. Additionally, testimony establishes that the operators record and transmit the production hours worked by other employees to the corporate office, answer questions regarding insurance benefits, and deal with mistakes on paychecks or pay stubs.

Evidence demonstrates that the operators have some minimal contact with other unit employees. This involves going to the lab area to pick up batch tickets several times a day.

³ Carbary does not use the employee lunchroom and likewise is not required to punch the timeclock, but evidence establishes that this is because his job tasks take him to various locales on and off the site. There is no dispute that he is an hourly employee who must submit a record of his hours worked to the Employer.

They also walk over to the shipping area to deliver address labels and retrieve packing slips, pick tickets, and bills of lading for filing. The record implies that this is not a frequent daily activity. Randy Minor testified that he does not see the operators in the production area and George Kunkle acknowledged that he has not observed them there either. According to David Keaton, the operators may pass through the maintenance area on their way to another part of the plant, but he has no contact with them unless there is a problem with his pay stub. Kunkle also noted that if the operators detect a discrepancy on a batch ticket, they take the problem to Inventory Manager John Dewalt rather than going directly to the production department.

The record further indicates that there are other factors which distinguish the operators. They do not wear the uniforms provided by the Employer to other employees. The operators do not frequent the lunchroom although it is apparently available to them. Also, while most employees park their cars in the Employer's back lot, the operators use the front lot. The Employer explains that the front lot has better lighting and therefore is safer for the operators both of whom are women. Finally, the operators are required to leave the site during the day since one of them makes a daily run to the local post office. Having the operators run such errands is the reason given by the Employer as to why the operators do not punch the timeclock.

The Employer notes that there is some common ground between the conditions of employment of the operators and the other employees. Thus, the operators get the same starting pay as other employees and receive the identical benefits package. They are required to take the same safety training. The Employer also notes that aside from the operators, other employees in the lab and in shipping enter data in the computer system. On this latter point, the record shows, however, that the data entered by other employees is minimal, at best.

The Board has long held that the distinction between office and plant clericals is rooted in community-of-interest concepts. *Minneapolis-Moline Co.*, 85 NLRB 597, 598 (1949). Clericals whose principal functions and duties relate to the general office operations and are performed within the general office itself, are office clericals who do not have a close community of interest with a production unit. This is true even if those clericals spend as much as 25 percent of their time in the production area and have daily contact with production personnel. *Container Research Corp.*, 188 NLRB 586, 587 (1971).

In arguing that the operators are plant clericals, the Employer relies, in large part, on the Board's decision in *Hamilton Halter Co.*, 270 NLRB 331 (1984). The Board there recognized that, "the distinction drawn between office clericals and plant clericals is not always clear." It went on to hold that the clericals at issue were plant clericals whose function was closely associated with production. The Board reached this conclusion even though these clericals worked between 70-95 percent of their time in the office and were physically separated from the production area.

Nevertheless, the factual setting in *Hamilton Halter Co.*, supra, is clearly distinguishable from that here. The clericals there performed a significant degree of production work. The Board noted that they filled sample orders for customers, assisted in loading and unloading trucks, stamped sizes on tags, and occasionally contributed to the design and development

of new products. Furthermore, because of their overlapping duties, these clericals were supervised at least part of the time by the shop supervisor. Even their office duties were different in that they processed the customer orders used in the production process.

The data entry operators at issue here are physically separated from the other unit employees. They do not even minimally engage in assisting the unit employees or working alongside them. More significantly, they spend all their time supervised by the office manager with no oversight at all by other supervisors. Additionally, they do not punch the time-clock, refrain from using the lunchroom, and run errands outside the facility. Thus, the contacts and interaction between the operators and other unit employees in their work and nonworking settings is negligible. The minor contact highlighted by the Employer does not, by itself, make employees plant clericals. *Container Research*, supra. As for their role in the production process, it is perhaps very telling that the Employer does not employ an operator at night when it is running a full production shift.

Based on the foregoing considerations and the record as a whole, I conclude that the manufacturing data entry operators are office clericals and do not share a community of interests with the employees included in the unit. See *Avecor, Inc.*, 296 NLRB 727, 746 (1989). I therefore find that they are ineligible to vote in the election directed here.

Based on the foregoing and the record as a whole, I further find that the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, maintenance, quality assurance and shipping/receiving employees including color matchers, production foremen, quality assurance foremen, shipping/receiving foremen and the maintenance safety manager at the Employer's Sandusky, Ohio facility but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.